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FILED
JAN 16 1984
ALEXANDER L STEVENS

No. 83-585

IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

REX C. CAUBLE, Individually and
Doing Business as Cauble Enterprises,
Petitioner,

v.

UNITED STATES OF AMERICA.

**REPLY TO OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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I. INTRODUCTION

We file this reply brief to address an argument not anticipated in our petition and to bring to the Court's attention a series of extraneous and undocumented assertions and several serious misstatements of the record relied on in the Brief for the United States in Opposition. (Hereinafter "Government Brief").

**II. THE GOVERNMENT HAS MADE ASSERTIONS
BEYOND THE RECORD TO SUPPORT ITS POSITION.**

The government attempts to rebut the serious due process issue raised at Point III of our petition for certiorari by arguing that it has taken all necessary steps to

protect the interests of innocent third parties in the forfeiture proceeding. The government first, without benefit of any record evidence, attempts to portray the limited partners as mere pawns who are under the control of Mr. Cauble and dependent upon him. Government Brief, p. 9 n.10; p. 13. It then goes on to cast Mr. Cauble's continuing stewardship of Cauble Enterprises as mismanagement marked by his squandering of assets. Government Brief, pp. 13-14.

The government recently made these allegations before the district court and asked that Cauble Enterprises be placed in receivership. The court rejected these ill-founded assertions and refused to appoint a receiver. While it is clearly improper to introduce information before this Court not contained in the record the government has gone farther and chosen to state as facts those very premises which were dismissed by the court below.

The government has also chosen to disclose settlement discussions which it has recently conducted with the limited partners, well after the close of the record in this case. Government Brief, p. 14. This is not only a violation of the spirit of Federal Rule of Evidence 408 but fails to provide any basis for judging the accuracy of its representations regarding the course of these negotiations.

The serious due process issue raised by the forfeiture in this case cannot be resolved on the basis of the government's assurances that it will protect the rights of the limited partners and reliance on unresolved matters not part of this record.

The government argues at p. 14 n.15 of its brief that the change in Department of Justice policy noted in our petition at p. 19 n.19 does not preclude the limited partners

from filing a petition for remission or mitigation of forfeiture. The record statement of the Deputy Assistant Attorney General quoted at p. 19 of the petition indicates that Department policy is precisely to the contrary. The record testimony of Department of Justice policy is that when legal interests are not coextensive with the order of forfeiture, as here, then third parties are entitled to judicial resolution of their claims and need not rely on the remission and mitigation process.

The government cannot avoid the facts of record that the third parties in this case are in fact innocent, have no available extrajudicial remedies and in accordance with the court of appeals' opinion have no rights to seek a vindication of their interest before the district court.

III. THE BRIEF IN OPPOSITION CONTAINS SERIOUS FACTUAL MISSTATEMENTS.

While we will not dwell on disputes of fact, the Government's Brief contains several significant misstatements of the record which we feel obliged to correct. The government's brief is littered with citations to the trial record which bear little or no relationship to the factual propositions for which they are cited. For example, several record excerpts ostensibly support the proposition that "several employees of Cauble Enterprises were arrested" on a marijuana smuggling boat. Government's Brief, p. 3. A review of these transcript references and the trial record in its entirety indicates that only one *former* employee of Cauble Enterprises was arrested on the boat. *See Tr. 2121, 2122.* This single employee was referred to as having worked for a Cauble Enterprises' subsidiary "before he became a drug smuggler." Tr. 1097.

Similarly, the Government's Brief contains the startling statement that Mr. Cauble, after receiving a grand

jury subpoena, directed Cauble Enterprises' bookkeeper to falsify bank deposit slips. Government Brief pp. 5, 12 n.13. A review of the transcript pages cited by the government demonstrates that, as the court of appeals found, Petition App. 23a n.55, there was evidence that notations had been entered on deposit slips after the originals were filed with the bank. There is no record evidence, however, of these changes being accomplished after the government subpoenas were issued. The bookkeeper testified that the notations were entered on the deposit slips as a matter of normal business routine to provide an accounting record of the nature of the deposits after they were made. Tr. 879-880.

We will not seek to correct other factual misstatements in the government's Opposition Brief but merely point these out to demonstrate the frailty of the government's argument in opposition.

Respectfully submitted,

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